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| 10/732,913                     | 12/10/2003  | David A. Fell        | 19441               | 6819             |
| 23556                          | 7590        | 06/22/2010           |                     |                  |
| KIMBERLY-CLARK WORLDWIDE, INC. |             |                      |                     |                  |
| Tara Pohlkotte                 |             |                      |                     |                  |
| 2300 Winchester Rd.            |             |                      |                     |                  |
| NEENAH, WI 54956               |             |                      |                     |                  |
| EXAMINER                       |             |                      |                     |                  |
| KIDWELL, MICHELE M             |             |                      |                     |                  |
| ART UNIT                       |             | PAPER NUMBER         |                     |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/732,913

**Applicant(s)**

FELL ET AL.

**Examiner**

Michele Kidwell

**Art Unit**

3761

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 March 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10-13, 16-22 and 24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-13, 16-22 and 24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections – 35 USC § 103***

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

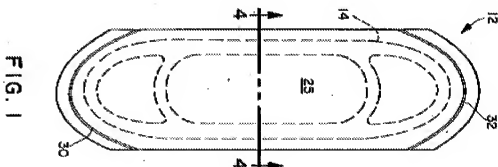
Claims 10-13, 16 – 22 and 24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Mason, Jr. *et al.* (US 4,886,513; hereinafter “Mason”) in view of Radwanski *et al.* (US 4,879,170; hereinafter “Radwanski”) and further in view of Lee *et al.* (US 6,015,934 A; hereinafter “Lee”).

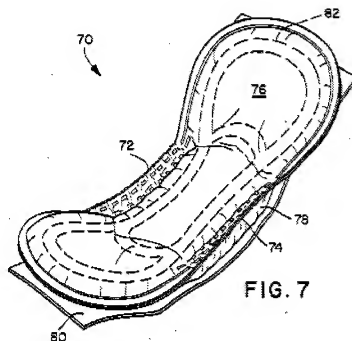
Regarding claims 10-12, 22 and 24, Mason teaches an absorbent article (12) that resists permanent creasing comprising:

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an absorbent core (20) and at least first and second opposite longitudinal end portions each defining a body side surface, wherein said absorbent article (12) is independently movable from a folded condition, wherein said body side surfaces of said first and second portions face will each other in a substantially parallel relationship under a sufficient applied pressure applied to said first and second portions, to an unfolded condition, wherein no pressure is applied to said first and second portions;

wherein said body-side surfaces of said first and second portions form at least one angle greater than or equal to about  $90^{\circ}$  to  $130^{\circ}$  in said unfolded condition (abstract)(see figures 1 and 7, *infra*).





Mason acknowledges that the absorbent material may be any material that provides sufficient absorption (col. 6, lines 46 – 48). Mason, however, is silent as to the article performance vectors which are functional limitations. While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. See *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). MPEP § 2114.

Optimization of ranges of performance vectors or intrinsic properties will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such performance vector is critical. MPEP § 2114.05.

A particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum

or workable ranges of said variable might be characterized as routine experimentation.

*In reAntonie*, 559 F.2d 618, 195 USPQ 6 (CCPA 1977)

In the case of the device of Mason, making the resilient material such that it is increasingly able resist compressive force so that it can readily spring back into shape after deformation would come at the expense of wearer comfort as it would exert this resilience against a wearer and their garments. Conversely, reducing the spring recovery ability excessively by making it too willowy would result in an article that lacked adequate spring recovery (a willowy material such as conventional cloth would have minimal spring recovery but would resist permanent folding).

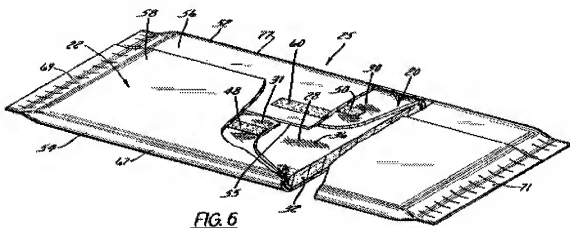
Furthermore, Radwanski teaches an absorbent core including the components as claimed.

It would have been obvious to one of ordinary skill in the art to modify the absorbent structure of Mason with structure taught by Radwanski because Mason anticipates the use of any absorbent material and Radwanski uses the specifically claimed materials in order to provide a material with increased web strength and integrity as taught by Radwanski in the abstract. While the specific configuration of materials may not be expressly set forth, the applicant is reminded that if one of ordinary skill in the art is able to "at once envisage" the specific embodiment within the generic teaching, the embodiment is anticipated. See MPEP 2131.02.

Mason in view of Radwanski do not expressly disclose a packaging component.

Lee teaches a sanitary napkin (20) with a packaging component (22)(see fig. 6, *infra*).

At the time of the invention, it would have been obvious for one of ordinary skill in the art to use the packaging component of Lee to wrap the absorbent article of Mason in order to render it convenient for a wearer to transport in a pocket or purse.



Regarding claim 13, Mason teaches a third longitudinally central crotch portion located between the longitudinal end portions.

Regarding claims 16-21, the references do not teach the specific caliper of the article.

Mere changes in size are not sufficient to patentably distinguish an invention over the prior art. See *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

Claims 10-13, 16 – 22 and 24 are rejected under 35 U.S.C. § 103(a) as obvious over Rainville-Lonn *et al.* (US 2003/0114805 A1; hereinafter “Rainville-Lonn”) in view of Radwanski *et al.* (US 4,879,170; hereinafter “Radwanski”) and further in view of Lee.

Regarding claims 10-12, 22 and 24, Rainville-Lonn teaches an absorbent article (10) that resists permanent creasing comprising:

an absorbent core comprising an activation layer (14) and at least first and second opposite longitudinal end portions each defining a body side surface, wherein said absorbent article (10) is independently movable from a folded condition, wherein said body side surfaces of said first and second portions face will each other in a substantially parallel relationship under a sufficient applied pressure applied to said first and second portions, to an unfolded condition, wherein no pressure is applied to said first and second portions;

wherein said body-side surfaces of said first and second portions form at least one angle greater than or equal to about 90° to 130° in an unfolded condition (abstract)(see figures 1 and 2, *infra*).

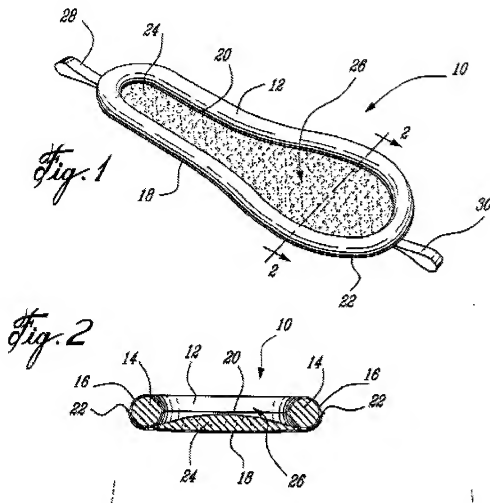
Rainville-Lonn is silent as to the article performance vectors which are functional limitations. While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. See *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). MPEP § 2114.



Optimization of ranges of performance vectors or intrinsic properties will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such performance vector is critical. MPEP § 2114.05.

A particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation. *In re Antonie*, 559 F.2d 618, 195 USPQ 6 (CCPA 1977)

In the case of the device of Rainville-Lonn, making the springy such that it is increasingly able resist compressive force so that it can readily spring back into shape after deformation would come at the expense of wearer comfort as it would exert this resilience against a wearer and their garments. Conversely, reducing the spring recovery ability excessively by making it too willowy would result in an article that lacked adequate spring recovery (a willowy material such as conventional cloth would have minimal spring recovery but would resist permanent folding).



Furthermore, Radwanski teaches an absorbent core including the components as claimed.

It would have been obvious to one of ordinary skill in the art to modify the absorbent structure of Rainville-Lonn with structure taught by Radwanski because Radwanski uses the specifically claimed materials in order to provide a material with increased web strength and integrity as taught by Radwanski in the abstract. While the specific configuration of materials may not be expressly set forth, the applicant is reminded that if one of ordinary skill in the art is able to "at once envisage" the specific

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embodiment within the generic teaching, the embodiment is anticipated. See MPEP 2131.02.

Rainville-Lonn in view of Radwanski do not expressly disclose a packaging component.

Rainville-Lonn does not expressly disclose a packaging component.

Lee teaches a sanitary napkin (20) with a packaging component (22)(see fig. 6, *supra*).

At the time of the invention, it would have been obvious for one of ordinary skill in the art to use the packaging component of Lee to wrap the absorbent article of Rainville-Lonn in order to render it convenient for a wearer to transport in a pocket or purse.

Regarding claim 13, Rainville-Lonn teaches a third portion central crotch portion located between the longitudinal end portions.

Regarding claims 16-21, the references do not teach the specific caliper of the article.

Mere changes in size are not sufficient to patentably distinguish an invention over the prior art. See *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to use the superabsorbent layer of Mason in the resilient sanitary napkin of Rainville-Lonn and Lee in order to provide enhanced absorbency.

### ***Response to Arguments***

Applicant's arguments filed March 18, 2010 have been fully considered but they are not persuasive.

With respect to the applicant's argument that Radwanski fails to teach or suggest a two layer absorbent core as claimed, the examiner disagrees. Col. 9 – 15 of Radwanski disclose the materials as claimed. Further, col. 15, lines 52 – 56 disclose the use of additional layers including the claimed materials. As such, if two layers are present, one may be considered as a body-side layer while the other may be considered as a garment side layer. Both layers include both the open cell foam and the elastic coform, thereby meeting the claimed limitations.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michele Kidwell/  
Primary Examiner, Art Unit 3761